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Federal Communications Commission
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BEFORE THE

Federal Communications Commission

X

In the Matter of: Docket Number: 92-122

POPLAR BLUFF, MISSOURI :

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1 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

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3 In the Matter of: : MM Docket No.

4 POPLAR BLUFF, MISSOURI : 92-122

5 - - - - - x

6 The above-entitled matter came on for
7 prehearing conference pursuant to Notice before Joseph
8 Stirmer, Chief Administrative Law Judge, at 2000 L
9 Street, Northwest, Hearing Room 1, Washington, D.C., on
10 Thursday, July 16, 1992, at 9:00 a.m.

11 APPEARANCES:

12 On Behalf of Calvary Educational Broadcasting
13 Network, Inc.:

14 JOSEPH E. DUNNE III

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16 1000 Thomas Jefferson Street, Northwest

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18 Washington, D.C. 20007

19 On Behalf of Chief, Mass Media Bureau:

20 PAULETTE LADEN, Esquire

21 Mass Media Bureau

22 2025 M Street, Northwest

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P R O C E E D I N G S

(Time Noted: 9:02 a.m.)

JUDGE STIRMER: We are on the record.

Good morning. This is a prehearing conference in Docket Number 92-122, involving the application of Calvary Educational Broadcasting Network, Inc., for renewal of license of Station KOKS-FM, Poplar Bluff, Missouri, and this case was designated for hearing by Hearing Designation Order, released June 12, 1992, and by Order of the Chief Administrative Law Judge, released June 18, 1992. I was designated to preside.

I would like at this time to obtain the appearances for Calvary Educational Broadcasting Network, Inc.

MR. DUNNE: Joseph E. Dunne III, of the firm of May & Dunne, Chartered.

JUDGE STIRMER: And for the Bureau?

MS. LADEN: For the Chief of the Mass Media Bureau, Paulette Laden. Also entering an appearance for the Chief of the Mass Media Bureau is James Shook, who is not here this morning, and sitting at the counsel table with me, but not entering an appearance, is the Deputy Chief of the FM Branch, Robert Greenberg.

JUDGE STIRMER: Very well. Let me dispose of

1 several preliminary matters.

2 Mr. Dunne, has publication been accomplished,
3 and has proof thereof been filed with the Commission?

4 MR. DUNNE: I believe it has been
5 accomplished, Your Honor. It has not been filed with
6 the Commission.

7 JUDGE STIRMER: All right. Would you see
8 that is done as soon as possible?

9 MR. DUNNE: Yes, sir.

10 JUDGE STIRMER: Now, there is a pending
11 motion filed by the Bureau to change the caption of the
12 case to correctly identify the file number.

13 MR. DUNNE: No objection, Your Honor.

14 JUDGE STIRMER: You have no objection?

15 MR. DUNNE: No, sir.

16 JUDGE STIRMER: Very well. So I will issue
17 an order granting that request.

18 MS. LADEN: Thank you, Your Honor.

19 JUDGE STIRMER: Now, let me preliminarily ask
20 whether or not this is the type of case that can be
21 settled in some fashion, either by way of a distress
22 sale or something along those lines?

23 MR. DUNNE: My client has been made aware of
24 the Commission's policies about distress sales,
25 Your Honor. I have nothing to report at this time.

1 JUDGE STIRMER: I do not know of any prior
2 case where there has been a distress sale involving an
3 educational station. I may be in error, but.

4 MR. DUNNE: There was a request for a
5 distress sale, Your Honor, in the Black Television
6 Workshop of Los Angeles, Inc., that was ultimately
7 denied for various reasons.

8 JUDGE STIRMER: But not because it was not an
9 option in that type of --

10 MR. DUNNE: No, sir.

11 JUDGE STIRMER: -- a proceeding? All right.

12 So, as I take it, Mr. Dunne, you have
13 acquainted your client with that particular option?

14 MR. DUNNE: Yes, I have, Your Honor.

15 JUDGE STIRMER: All right. Now, is there any
16 discovery that will be undertaken by either party?

17 Ms. Laden, do you contemplate instituting any
18 discovery?

19 MS. LADEN: Yes, Your Honor. We are planning
20 to file a request for production of documents within
21 the next few days, and we are talking about doing
22 depositions. It is something that I wanted to discuss
23 with Mr. Dunne. We have budgetary problems with going
24 out to Poplar Bluff to do depositions. We were hoping
25 perhaps we could work something out and do depositions

1 here.

2 MR. DUNNE: Your Honor, just for the record,
3 my client has budgetary problems too, and we are going
4 to be limited in what we can do to accommodate the
5 Bureau or anyone else in that regard.

6 JUDGE STIRMER: I guess it seems to me that
7 there has been a great deal of material that has
8 already been exchanged, and filed with the Commission,
9 that would be relevant to a resolution of these issues.
10 I have in mind the various documents discussed by the
11 Commission in its Designation Order. It would seem to
12 me that perhaps you all can stipulate as to what those
13 documents are, and have them made into a joint exhibit,
14 and have them introduced into evidence, if that is
15 agreeable.

16 MR. DUNNE: It is agreeable with me,
17 Your Honor. Whatever has been filed with the
18 Commission over my client's signature, obviously, you
19 can take official notice of.

20 JUDGE STIRMER: All right.

21 MR. DUNNE: We have no objection to that, and
22 I would like to state for the record, Ms. Laden
23 mentioned that she wanted to file, was contemplating
24 filing a motion for production of documents. That may
25 be unnecessary. I mean, that is perhaps something we

1 can agree on.

2 MS. LADEN: Yes. It may be, Your Honor.

3 We do have a great deal of material already.
4 Some of the materials we are requesting in fact may not
5 exist, and I did contemplate that we would get together
6 and work some of these things out.

7 JUDGE STIRMER: All right. Well, what I
8 propose to do is give you an opportunity to informally
9 see if you can obtain the documents that you desire,
10 and if you cannot, and you need to file a motion for
11 production of documents, then you would be given an
12 opportunity to do that. But as far as I understand,
13 you are going to request the production of documents
14 whether it be informally or formally, and that you
15 would like to take depositions?

16 MS. LADEN: That is right.

17 JUDGE STIRMER: Of how many witnesses?

18 MS. LADEN: I believe two, possibly a third
19 witness.

20 Oh, Your Honor, are you asking me about
21 witnesses at the hearing, or for depositions?

22 JUDGE STIRMER: No. Depositions. I am just
23 talking about discovery at this point.

24 MS. LADEN: Ahhh. Yes, Your Honor. Two, Mr.
25 Stewart, Ms. Stewart, and possibly, I know his first

1 name is Charles, I cannot remember his last name, the
2 gentleman who did the repairs.

3 JUDGE STIRMER: The engineer?

4 MS. LADEN: The engineer, who was retained by
5 Mr. and Ms. Stewart to do the repairs in the homes.

6 Those are the ones we have talked about.

7 JUDGE STIRMER: All right.

8 Now, how about you, Mr. Dunne? Do you
9 contemplate engaging in any discovery?

10 MR. DUNNE: At this point, no, Your Honor,
11 but I would not want to foreclose the possibility.

12 JUDGE STIRMER: Well, what I intend to do is
13 establish a date by which all discovery will be
14 completed, so if you do intend to engage in discovery,
15 you are going to have to initiate it sufficiently in
16 advance of that completion date so as to have it all
17 concluded by that time.

18 MR. DUNNE: Understood, Your Honor.

19 JUDGE STIRMER: Now, I would certainly
20 encourage the parties to attempt to stipulate to
21 whatever facts are beyond dispute. There are certain
22 events that have occurred that I believe, based on
23 reading the Designation Order, are beyond dispute, and
24 there should be no problem in stipulating to those
25 facts, and also to agreeing as to what documents are

1 relevant to the resolution of the issues, such as
2 letters, responses, Commission orders, and things of
3 that nature.

4 Now, Mr. Dunne, you have the burden of
5 proceeding and the burden of proof --

6 MR. DUNNE: That is correct, Your Honor.

7 JUDGE STIRMER: -- under these issues. How
8 many witnesses do you intend to call at the hearing?

9 MR. DUNNE: At this time, Your Honor, I am
10 not sure.

11 JUDGE STIRMER: Can you give me an
12 approximate number?

13 MR. DUNNE: I would think there would be at
14 least three principals for employees of KOKS that would
15 be called, and we are probably going to be trying to
16 introduce evidence on a good past broadcast record, in
17 mitigation, and how many witnesses we call pursuant to
18 that, I do not know.

19 JUDGE STIRMER: Well.

20 MR. DUNNE: That has been determined yet.

21 JUDGE STIRMER: You say, a good past
22 broadcast record?

23 MR. DUNNE: Yes.

24 JUDGE STIRMER: Now, that would be a relevant
25 factor if this were a comparative renewal.

1 MR. DUNNE: Your Honor, I believe it is also,
2 you can introduce evidence concerning good past
3 broadcast record in mitigation.

4 JUDGE STIRMER: In mitigation of some of the
5 violations?

6 MR. DUNNE: That is correct, Your Honor.

7 JUDGE STIRMER: Okay. As I understand it,
8 you are correct that you can introduce mitigating
9 evidence to offset some of the violations, but
10 mitigating evidence is not available to offset
11 misrepresentation.

12 MR. DUNNE: I understand that, Your Honor,
13 but one of the issues I believe has to do with
14 ineptness.

15 JUDGE STIRMER: That is correct.

16 MR. DUNNE: And I believe mitigation evidence
17 is certainly relevant under that, that particular
18 issue.

19 JUDGE STIRMER: Ineptness, and the 73.318
20 issue.

21 MR. DUNNE: That is correct.

22 JUDGE STIRMER: Ms. Laden, what do you say to
23 that?

24 MS. LADEN: I agree with what Your Honor
25 indicated. Past broadcast record, in our opinion,

1 cannot be used to mitigate misrepresentation.

2 I have not done the research. It may very
3 well be that Mr. Dunne is correct, and it can be used
4 to mitigate the ineptness issue, and some of the other
5 technical issues.

6 JUDGE STIRMER: All right. How many
7 witnesses of this nature do you think you will call?

8 MR. DUNNE: At this point, Your Honor, quite
9 frankly, if I gave you a number, it would be pure
10 speculation. I just do not know.

11 JUDGE STIRMER: The reason I say that is
12 because I think we are going to have to learn the
13 identity of any such witnesses at an early date, so as
14 to provide the Bureau with an opportunity, if they want
15 to, to interview them --

16 MR. DUNNE: Yes.

17 JUDGE STIRMER: -- or to take their
18 deposition, or things of that nature, so while you may
19 not know the identity of those people at this time, I
20 think it behooves you to move rapidly with the
21 preparation of your case, so as to ascertain the
22 identity of those individuals, at an early date. We
23 have a hearing scheduled to commence in November, and
24 certainly, well in advance of that date the identity of
25 these people will have to be revealed to the Bureau.

1 All right. Let us look at these issues for a
2 moment, Mr. Dunne. The first issue deals with
3 violations of Section 73.318.

4 All right. Now, what do you contemplate
5 showing with respect to that issue? I mean, what type
6 of evidence would you be introducing with respect to
7 that issue?

8 Would you be making an engineering showing as
9 to the exact nature of the blanketing problem that
10 exists?

11 MR. DUNNE: At this point, Your Honor, that
12 is a possibility. Under that particular issue, the
13 possible evidence would be an engineering showing, plus
14 the introduction of particular, two or three witnesses.

15 But that, we are not sure yet.

16 JUDGE STIRMER: Now, with respect to Issue 2,
17 which is the misrepresentation issue regarding the
18 extent and success of the efforts of the station to
19 correct a blanketing interference problem, and the
20 representations relating thereto, I take it you will
21 introduce the testimony of Mr. Stewart?

22 MR. DUNNE: Probably the people that Ms.
23 Laden identified, Mr. and Ms. Stewart, and I believe
24 his name was Charles Lampe, and perhaps one or two
25 other KOKS employees.

1 At this point, I will anticipate that the
2 witnesses that we would present under that issue would
3 not exceed six.

4 JUDGE STIRMER: Well, now we have this
5 so-called ineptness issue, which takes in a great many
6 other technical violations, and they are enumerated in
7 paragraph 16 of the Designation Order. Now, how are
8 you going to proceed with respect to those violations?

9 MR. DUNNE: Your Honor, we would probably
10 introduce evidence from two to four witnesses, probably
11 it would be many of the same witnesses that will be
12 examined under Issue 2, and then we would also
13 introduce mitigation evidence under that issue.

14 JUDGE STIRMER: All right. Now, what is the
15 possibility of agreeing to a written case with regard
16 to the evidence that is going to be presented?

17 A great many of these witnesses, I take it,
18 are your control?

19 MR. DUNNE: Yes, sir, they are. There would
20 be principals or employees of Calvary.

21 JUDGE STIRMER: Well, would you agree to a
22 written case, if that appears to be a proper way of
23 proceeding, or do you think this?

24 MR. DUNNE: At this point, Your Honor, I
25 would like to see how discovery turns out, and how it

1 looks. This case is going to turn on credibility, and
2 I believe that you are going to have view the witnesses
3 in person to make that judgment, especially on the
4 misrepresentation issue, and probably on the other
5 issues as well.

6 I have no desire to spend my life, and I know
7 you do not, and I am certain Ms. Laden does not, at a
8 field hearing in Poplar Bluff, but on the other hand,
9 this is these people's licenses on the line, and we are
10 talking about a credibility finding here. I do not see
11 any way that, on the essential issues, that we can
12 submit on a written case.

13 I will do everything I can, and I know Ms.
14 Laden will, to narrow the focus of the hearing to make
15 it as quick as possible, and to stipulate as many
16 documents into the record as seem reasonable and
17 necessary, but I believe we are going to have to review
18 the credibility of the witnesses, under oath.

19 JUDGE STIRMER: Well, it has always been my
20 experience, Mr. Dunne, that the credibility of the
21 witness is developed during cross-examination, and not
22 direct examination.

23 MR. DUNNE: Well, that is true, Your Honor,
24 but you have got to, you know.

25 JUDGE STIRMER: But, so, I would urge you not

1 to foreclose the possibility that you might want to
2 reduce the direct testimony of these witnesses to
3 writing, and then offer them for cross-examination on
4 their direct testimony.

5 MR. DUNNE: Oh, that? Excuse me, if I gave
6 you the impression.

7 I assume that we are going to be submitting a
8 written case, Your Honor.

9 JUDGE STIRMER: Yes.

10 MR. DUNNE: And with making the witnesses
11 available for cross-examination. I have been through
12 hearings before.

13 JUDGE STIRMER: Yes. No, I --

14 MR. DUNNE: But I do not see how we can get
15 away with you looking at the witnesses on the witness
16 stand.

17 JUDGE STIRMER: Oh, I agree with you,
18 probably, where you are dealing with issues such as we
19 have to deal with, it is probably essential that I
20 observe the witnesses testifying, and I did not mean to
21 imply that I wanted you all to agree to a strictly
22 frozen, written presentation, with no live, oral
23 testimony.

24 MR. DUNNE: Okay. That is how I interpreted
25 your question, Your Honor.

1 JUDGE STIRMER: Well, that --

2 MR. DUNNE: I am sorry.

3 JUDGE STIRMER: -- I am sorry for creating
4 that impression. That was erroneous. That was not my
5 intention, but what I would suggest is that you can
6 reduce as much of your direct case to writing as
7 possible.

8 MR. DUNNE: Yes. We will do that,
9 Your Honor.

10 JUDGE STIRMER: And with regard to witnesses
11 where you feel you want to present orally, you will
12 just identify who they are, and the nature of the
13 testimony they are going to offer. We will provide for
14 that, when we consider a schedule for the hearing
15 procedures.

16 Now, Ms. Laden, what do you contemplate in
17 the way of evidence and witnesses?

18 MS. LADEN: Well, Your Honor, as you pointed
19 out, the burden of proceeding and the burden of proof
20 is on the licensee. We do have a rebuttal case that we
21 are contemplating.

22 At this point, we have identified about 15
23 witnesses, and they consist of people who have had the
24 blanketing problem, residents of Poplar Bluff, and
25 there are about 15 of them. We are trying to reduce

1 the number. No more than 15. Also, we are
2 anticipating calling the engineer from the Field
3 Operations Bureau who did the at-home visits that are
4 referenced in the Designation Order.

5 Now, as I said, Your Honor, those would be
6 rebuttal witnesses. I have no objection to exchanging,
7 although it is difficult not knowing what the direct
8 case is going to be, to exchange the rebuttal case in
9 advance, in writing, but I can certainly work out with
10 Mr. Dunne what the nature, I think we both know the
11 nature of the testimony --

12 JUDGE STIRMER: Well.

13 MS. LADEN: -- of those witnesses.

14 JUDGE STIRMER: What I can do, if you think
15 it advisable, is provide for an exchange by Mr. Dunne,
16 and then a later exchange by you, after you see the
17 nature of his direct case. We can provide for that
18 type of a procedure, so that the party having the
19 burden of proceeding and the burden of proof would
20 exchange his exhibits, let us say, on, just using these
21 dates for illustrative purposes at this time, the
22 October 13, and the Bureau would exchange their case on
23 October 27. I am just using that.

24 So that, you would have the nature of his
25 case before you exchange your rebuttal case, so that

1 when we go to hearing, you all know what each other's
2 cases are going to consist of.

3 MR. DUNNE: Your Honor, may I make a
4 suggestion in that regard?

5 JUDGE STIRMER: Sure.

6 MR. DUNNE: Seeing as how this is a little
7 bit different than the standard case, may suggest that,
8 before we set a date for discovery, that discovery will
9 take place and be finalized, and within a certain
10 amount of time after discovery, we exchange a witness
11 list of people whom we are going to call in response to
12 the witnesses, or to the issues, and go from there, or
13 perhaps we ought to do that earlier.

14 MS. LADEN: I am prepared to do what I
15 anticipate now. The difficulty that I have is that our
16 case is a rebuttal case, and I can tell you, as soon as
17 we go off the record here, I can tell you who I am
18 thinking about calling now, but until we do our own
19 discovery and we find, and particularly until we see
20 your case, which we have not seen, and particularly if
21 we do not have an opportunity to depose your witnesses,
22 there is no way that we can tell who we are going to
23 call in a rebuttal case, but I am prepared to identify
24 for you today who we are thinking about calling at this
25 point.

1 I also wanted to mention, Your Honor, that I
2 think a lot of these things may be able to be worked
3 out by stipulation. A lot of the things that I am
4 anticipating calling witnesses are, I am anticipating
5 worst case scenario. A lot of that testimony may
6 become moot if we can stipulate to some of the
7 engineering questions, and perhaps even some of the
8 testimony.

9 It may be possible that we can exchange in
10 written form some of our rebuttal testimony, and that
11 Mr. Dunne will not call those witnesses for
12 cross-examination. That may be possible, also.

13 MR. DUNNE: Your Honor, if I could kind of
14 think out loud, on the record? I know that is
15 dangerous to do, but one of things that has been done
16 on a case in which I am involved has been that the
17 judge required, before discovery was actually
18 initiated, the exchange of an outline of what the
19 parties anticipated submitting as their direct case
20 exhibits, and that more or less set the scenes for
21 discovery and everything else.

22 JUDGE STIRMER: Well, let me say this.

23 MR. DUNNE: And that may be a good way to
24 proceed in this case.

25 JUDGE STIRMER: You can discuss this

1 informally, between the two of you. What I am going to
2 do ultimately during this conference is establish
3 certain procedural dates.

4 MR. DUNNE: Yes.

5 JUDGE STIRMER: But aside from that, you can
6 do whatever you want in order to narrow the issues,
7 stipulate the facts, agree on what documents you are
8 going to offer, agree on what witnesses are going to be
9 presented, agree on what they are going to be
10 testifying about, if they have previously submitted
11 statements to the Commission in the way of affidavits
12 or otherwise, that we are going to be using these
13 statements as their direct testimony, and then you can
14 cross-examine them, or whatever you want to agree to.

15 I do not think there are going to be that
16 many surprises in this case, based on my reading of
17 this Designation Order. I mean, I assume, Ms. Laden,
18 that the witnesses you are talking about are the 14
19 witnesses or so mentioned in the Designation Order as
20 people who were dissatisfied with the efforts made by
21 the station to rectify the blanketing problem when it
22 was called to their attention?

23 MS. LADEN: That is exactly right,
24 Your Honor.

25 JUDGE STIRMER: Right. Okay. You know, you

1 read this thing, and you do not have to be a rocket
2 scientist to know what is involved here, and who the
3 witnesses are going to be, so I think if they have
4 submitted, I do not know how you intend to proceed, but
5 if they have previously submitted statements to the
6 Commission that could serve as their direct testimony,
7 then we can go from there, or perhaps you could even
8 reach stipulations as to what was done and what was not
9 done with regard to rectifying the problem, the extent
10 of the remedial action taken, and then argue the
11 significance of it all, if that is what it turns out to
12 be.

13 MS. LADEN: Your Honor, I also wanted to?

14 I do not know, I am speculating, but I do
15 know that this matter has been the subject of some
16 local controversy, and I do not know whether, I have
17 not been approached by anyone, and some of the people
18 who are most active among the complainants are among
19 the 14 people that you mentioned, but I think it is
20 also fair to anticipate that we may have some non-party
21 witnesses who want to testify.

22 JUDGE STIRMER: You mean, so-called public
23 witnesses?

24 MS. LADEN: Public witnesses. That is right.

25 JUDGE STIRMER: Well, if individuals make

1 themselves known to the Commission, and express a
2 desire to testify, and if it appears they have relevant
3 and material evidence to offer with respect to the
4 issues that have been designated, then we will make an
5 effort to hear them. If those witnesses appear to have
6 information, and they want to testify, and it is not
7 cumulative, we will make an effort to hear those
8 people.

9 But I do not know of any such witness at this
10 point.

11 MS. LADEN: I do not know of any, either,
12 Your Honor.

13 JUDGE STIRMER: How long do you think it will
14 take to hear this case, in its entirety, the direct
15 case and the rebuttal case? I guess that probably
16 would depend on how many stipulations you are able to
17 enter into, and narrow the area of controversy and the
18 need for witnesses, but what would be your best
19 estimate?

20 MR. DUNNE: Your Honor, I think it would, in
21 a fit of wildest optimism, I do not think this case is
22 going to be concluded in less than a week, and I
23 suspect it is going to be longer than that. If the
24 Bureau calls even close to 15 witnesses, plus our five,
25 plus mitigation witnesses, we are talking between 20

1 and 30 witnesses.

2 JUDGE STIRMER: Well, well.

3 MR. DUNNE: And that is not including whoever
4 public witnesses that the Bureau has mentioned, or
5 whoever.

6 JUDGE STIRMER: Well, what I would urge the
7 Bureau to consider and perhaps you will need it with
8 the consent of Mr. Dunne is, in lieu of calling these
9 15 witnesses, you might be able to rely on the
10 testimony of the engineer, who can testify as to what
11 he found when he visited these particular homes, and
12 what the extent of the remedial action that was taken
13 was, and, in other words, try to get the testimony that
14 you otherwise obtain from these 15 witnesses through
15 the testimony of the engineer.

16 I do not know what Mr. Dunne's view would be
17 on that. We would have to discuss it with him, but
18 that might be something that you may wish to consider.

19 MS. LADEN: Yes, Your Honor. As I said, I
20 think we may be able to stipulate also. I do not think
21 there is a lot of dispute.

22 JUDGE STIRMER: Yes. Well, for example --

23 MR. DUNNE: Your Honor, if I can just
24 interject, here?

25 Well, again, most of the controversy has to

1 do with my client going out and talking to these
2 people, and these people not being satisfied with what
3 was done. And again, you are going to end up with two
4 separate sides of the same story. And again, I think
5 it is going to be a credibility issue, and we are going
6 to have people in front of you to make that judgment.

7 MR. DUNNE: And I do not know how many of
8 these witnesses are going to fall in that category, but
9 I suspect a great many of them.

10 JUDGE STIRMER: But there are certain facts
11 that are not disputed. For example, is there a dispute
12 as to how many television sets were corrected by the
13 installation of the filter trip?

14 As I understand it, reading from the
15 Designation Order, there was only one such filter --

16 MR. DUNNE: My client disputes that,
17 Your Honor.

18 JUDGE STIRMER: -- installed in each one of
19 these homes. Your client disputes that?

20 MR. DUNNE: Yes, sir. I believe we are going
21 to be disputing that particular fact.

22 JUDGE STIRMER: All right. Well then, we
23 have a controversy, and it may take witnesses to ferret
24 out the facts.

25 MR. DUNNE: That is what I am suggesting,

1 Your Honor.

2 JUDGE STIRMER: All right. Because that, it
3 appeared to me from reading this to be a matter that
4 was not in dispute, that your client indicated that he
5 did not have enough money to do more than one
6 installation in each home. That was my understanding
7 from reading this Designation Order. Now, if that is
8 not correct, then?

9 MR. DUNNE: I believe that fact will remain
10 in dispute, Your Honor.

11 JUDGE STIRMER: All right. Very well.

12 Then, well, we may need the 15 witnesses --

13 MR. DUNNE: Unfortunately that is true,
14 Your Honor.

15 JUDGE STIRMER: -- unless the engineer viewed
16 each and every one of the radios and televisions in a
17 particular home, and could testify of his own knowledge
18 that he only saw one filter trap installed.

19 All right. Let me ask this other question.
20 Reading the Designation Order, it appears that this
21 licensee installed a seven-bay antenna, when it was
22 authorized to use a four-bay antenna, is that right?

23 MR. DUNNE: Yes, Your Honor. I do not know
24 whether it was a seven-bay antenna, specifically, but
25 yes, it was a different antenna installed.